

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

* * * * * C.A. NO. 00-105L
EFRAT UNGAR, et al *
VS. * NOVEMBER 17, 2010
* 2:09 P.M.
*
THE PALESTINIAN *
LIBERATION ORGANIZATION, *
et al *
* PROVIDENCE, RI
* * * * *

BEFORE THE HONORABLE RONALD R. LAGUEUX
SENIOR JUDGE
(Motion for Preliminary Injunction)
VOLUME I

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I N D E X

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DEFENDANT

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1 17 NOVEMBER 2010 -- 2:09 A.M.

2 THE COURT: The matter before the Court is the
3 Estate of Yaron Ungar, et al v. The Palestinian
4 Authority, et al.

5 It is here on Plaintiff's-Judgment Creditor's
6 urgent motion for a temporary restraining order, which
7 was issued, and now a preliminary injunction today.

8 I will hear this matter on permanent injunction
9 if both sides agree today. If they don't agree, then
10 depending on what I do with this motion, I'll set it
11 down for hearing on permanent injunction in about three
12 weeks. So if you want to try it twice, that's fine
13 with me.

14 Will the attorneys identify themselves for the
15 record.

16 MR. WISTOW: Max Wistow for the Plaintiffs.

17 MR. ROCHON: Good afternoon, Your Honor.

18 Mark Rochon on behalf of the Defendants. With me is
19 Brian Hill.

20 MR. HILL: Good afternoon, Your Honor.

21 MR. STRACHMAN: David Strachman for the
22 Plaintiffs.

23 MR. SHERMAN: Deming Sherman for the Palestinian
24 Defendants.

25 MR. WISTOW: Did Your Honor want a response now

1 to the question about the permanent injunction?

2 THE COURT: Yeah. Do you want to talk to
3 somebody about it first?

4 MR. WISTOW: No. I think we're in a position to
5 agree to consolidating the hearings.

6 MR. ROCHON: So are we, Your Honor.

7 THE COURT: I'm sorry?

8 MR. ROCHON: So are we.

9 THE COURT: All right. So I'll hear this
10 matter, then, on permanent injunction.

11 MR. WISTOW: May I -- forgive me, Your Honor. I
12 spoke rather hastily. May have one moment to confer
13 with my brother?

14 THE COURT: Yes.

15 Your Honor, let me express my concern about the
16 issue. We're down for trial January 18th, as
17 Your Honor knows, on the motion to vacate.

18 If -- as I understand it now, if a preliminary
19 injunction is issued or not issued, there's an ability
20 to take an appeal to the First Circuit on the
21 preliminary injunction issue, but that would not divest
22 the Court of jurisdiction to have the hearing on the
23 18th on the underlying matter of the motion to vacate.

24 What I'm concerned about is, if there is a
25 permanent injunction entered in the case, I'm really

1 unclear, frankly, about, if there's an appeal from a
2 permanent injunction, would that divest the Court
3 entirely of its jurisdiction, and then we would mess up
4 the hearing date, arguably, in January. So I have to
5 confess my ignorance of the issue.

6 What I really am very anxious to do is have the
7 hearing in January, and I don't want to do anything
8 that would --

9 THE COURT: This is an ancillary matter, it
10 seems to me, and if there is an appeal pending in this
11 ancillary matter, I don't think it would prevent -- I
12 don't think the Court of Appeals would conclude that I
13 couldn't go forward with the hearing on the motion to
14 vacate.

15 MR. WISTOW: I'm wondering if counsel for the
16 Defendants would agree that jurisdiction would remain
17 in this Court so that we could have the hearing in
18 January because I'm very, very concerned about that
19 issue.

20 MR. ROCHON: Your Honor, it's -- I don't know if
21 you prefer us at counsel table or at the lectern when
22 we address the Court.

23 Your Honor, I don't know what the law is on
24 that, frankly. It hadn't -- I don't think it's going
25 to be different depending on whether it's a preliminary

1 injunction or a permanent injunction if there's an
2 appeal, so that I --

3 THE COURT: Well, I don't think there could be
4 an appeal if I issue a preliminary injunction.

5 MR. ROCHON: Your Honor --

6 THE COURT: I think that's not appealable. It's
7 interlocutory.

8 MR. ROCHON: -- it is our view that it's more
9 efficient to combine the proceedings, as I said.

10 I take no position on jurisdiction because I
11 just don't know, and the Appellate Court's not going to
12 let me decide that issue. The First Circuit's not
13 going to come to me and say, Tell us about our
14 appellate jurisdiction. It's our view that we should
15 go forward on the 18th, as scheduled. It's our view
16 that we should have the combined hearing today.

17 MR. WISTOW: Would it be possible, Your Honor --
18 forgive me, I just didn't anticipate this would come
19 up. Would it be possible to have the hearing on
20 preliminary injunction and then get back to the Court
21 within 48 hours on the issue of whether or not it could
22 be consolidated?

23 MR. ROCHON: All I'm asking is to know what I'm
24 doing. I'm either having a combined hearing or I'm
25 not. I think we should know that before we start.

1 So I don't think it takes away the jurisdiction.
2 I'll tell you that. It's my view it does not. I'm
3 just saying that, if we file a notice of appeal and the
4 First Circuit decides it does, we got an issue.

5 I frankly think it's pretty clear. It's an
6 ancillary matter. It would not divest you of
7 jurisdiction to have the hearing on the 18th. I
8 haven't researched it, and it's not my call. Appellate
9 jurisdiction is going to be decided by that Court, not
10 by me, that's for sure.

11 But I do feel that we should know before we
12 begin the hearing whether it's a combined hearing or
13 not.

14 MR. WISTOW: May I suggest this, Your Honor? By
15 statute, the grant of the preliminary injunction is
16 appealable by statute.

17 THE COURT: It is?

18 MR. WISTOW: Yes, it is.

19 But the Court would not be divested of its
20 jurisdiction on the underlying matter. What I'm
21 worried about is I haven't looked at the law on
22 permanent injunction, and I'm just -- nothing would be
23 worse for the Plaintiffs than to have this matter put
24 over from the January hearing date because there's an
25 appeal one way or the other.

1 I apologize to the Court for my ignorance, but I
2 hope you understand how significant this is.

3 THE COURT: Well, do you think you can find a
4 quick answer? I can take a short recess and think
5 about it myself because, frankly, over the years I have
6 not consolidated these hearings. I have heard it on
7 preliminary injunction and issued my decision on
8 preliminary, and whether it's granted or denied, I set
9 it down on permanent injunction, and usually the case
10 has gone away by then.

11 MR. WISTOW: Well, would it be possible, as a
12 compromise, to, if we're successful in getting a
13 preliminary injunction today, holding a decision on
14 whether or not it's permanent until the January
15 hearing? That would solve my concern completely. And
16 I think it would accomplish what everybody desires
17 anyway.

18 THE COURT: I could put it over. If I hear it
19 on preliminary, I can put over any hearing on the
20 permanent injunction until after I've heard the motion
21 to vacate.

22 MR. WISTOW: I would very much be in favor of
23 that.

24 THE COURT: I forgot to bring in my notebook.
25 Can you go and get me a notebook?

1 All right. We'll hear it on preliminary
2 injunction, and we'll see where we go from there.

3 MR. WISTOW: Thank you, Your Honor.

4 THE COURT: I learned something today. I always
5 thought that the issuance of a preliminary injunction
6 was not appealable because it was interlocutory. But
7 now that I think about it, I've had some cases where
8 there's been appeal after I've issued a preliminary
9 injunction. It's different in the State Court than it
10 is in the Federal Court.

11 MR. WISTOW: Yes.

12 THE COURT: Sometimes things come back to me
13 from my State Court years. I spent 18 years on the
14 State Court and now 24 years on this Federal Court, so
15 I've completed 42 years as a Trial Judge last June. I
16 thought I had seen about everything. There's always
17 something new every day.

18 Do you intend to offer any evidence,
19 Mr. Strachman -- Mr. Wistow?

20 MR. WISTOW: Only documentary evidence.

21 THE COURT: Do you want to make an opening
22 statement before you submit the evidence?

23 MR. WISTOW: Well, what I was planning to do is
24 make an argument and submit the documents as I spoke,
25 if that's all right with the Court.

1 THE COURT: All right.

2 MR. WISTOW: Shall I proceed, Your Honor?

3 THE COURT: Just wait for my notebook so I can
4 take notes.

5 The Elmo is not working.

6 THE CLERK: So we'll have to do it the
7 old-fashioned way.

8 THE COURT: The old-fashioned way is --

9 MR. ROCHON: That's the best.

10 THE COURT: We don't have any witnesses, so
11 that's not a problem.

12 All right. Go ahead.

13 MR. WISTOW: Thank you, Your Honor. We're here
14 on a very narrow and circumscribed issue. Your Honor
15 issued a temporary restraining order, the operative
16 provisions of which were that the Palestinian
17 Authority, which is a judgment debtor in this case, and
18 I quote, Shall be and hereby is prohibited from taking
19 any actions to collect or compel payment of any debt
20 owed by Orascom to the Palestine Investment Fund
21 pending the hearing on and disposition of the motion
22 for the preliminary injunction.

23 And I just want to emphasize how narrow the
24 relief is we're looking for today. We're asking only
25 for an injunction to run against the Palestinian

1 Authority. We are not asking for an injunction against
2 Orascom. We're not asking for an injunction against
3 the Palestine Investment Fund.

4 What we're asking for is the Court's
5 intervention to help protect the Plaintiffs from
6 obstruction by the Palestinian Authority, the
7 Defendant, from interference really with two judgments
8 entered by this Court, not merely the original default
9 judgment, but a subsequent judgment on the Creditor's
10 Bill.

11 And if I may go back historically, and I know
12 Your Honor will recall this, but just very briefly, the
13 original default judgment for the approximate amount of
14 \$116 million was --

15 THE COURT: Actually, it was about six different
16 judgments, wasn't it?

17 MR. WISTOW: You're -- what we've done is we've
18 fallen into the trap of referring it as to one
19 judgment. Your Honor is right. There were multiple
20 Plaintiffs, each one had a separate judgment, for a
21 total of approximately \$116 million. But Your Honor is
22 precisely right, there were multiple judgments.

23 In any event, for ease of description, I'm going
24 to continue with my error, with the Court's permission,
25 of referring to it as if it were one judgment, which

1 indeed it was not.

2 THE COURT: All right.

3 MR. WISTOW: In any event, the \$116 million
4 judgment was entered by this Court on July 13th of
5 2004. The Defendants, Palestinian Authority and
6 Palestinian Liberation Organization, have been
7 represented by counsel throughout the proceedings and
8 up to the time of the default, and indeed there was an
9 appeal to the First Circuit, which affirmed
10 Your Honor's judgment on March 31st of '05.
11 Subsequently, the United States Supreme Court denied
12 *certiorari* on the request of the Defendants.

13 Almost exactly two years later, the Plaintiffs
14 came to the Court with a Creditor's Bill, and in the
15 Creditor's Bill, they asked this Court to transfer
16 ownership to the Plaintiffs of the stock ownership that
17 the Defendant Palestinian Authority had in a
18 corporation called the Palestinian Investment Fund.

19 On September 19th, 2006, Your Honor granted a
20 judgment in that Creditor's Bill, a final judgment.
21 Counsel, in the person of Mr. Sherman who's here today,
22 was present on that day that Your Honor decided to
23 grant the relief.

24 What I'd like to do is hand up to Your Honor,
25 just for the sake of expedition, copies of that final

1 judgment because there's something important in it that
2 I would like to point out to the Court. With the
3 Court's permission, may I --

4 THE COURT: Let's mark it as an exhibit. We'll
5 mark it Plaintiffs' Exhibit 1.

6 (Plaintiffs' Exhibit No. 1
7 was admitted in full).

8 MR. WISTOW: Now, I'd like to refer Your Honor
9 to the last page of that judgment. The judgment
10 incorporated certain documents within and is a part of
11 the judgment. The very last page is a certificate of a
12 public shareholding company, and what's critical for
13 purposes of our hearing this morning is the
14 identification of the shareholders in the Palestine
15 Investment Fund.

16 It's clearly identified who the shareholders
17 are, the Palestinian National Authority, which is
18 another name that the Palestinian Authority is known
19 by. So at the moment that Your Honor granted the
20 Creditor's Bill, the sole shareholder of the
21 Palestinian Investment Fund was the Palestinian
22 Authority.

23 Indeed, I have a copy of the Articles of
24 Association, as they existed at that time, which I also
25 would like to hand up to Your Honor. This is not a

1 complete copy. They're rather lengthy. I just took
2 the applicable page.

3 THE COURT: Let's mark it Plaintiffs' Exhibit 2.
4 (Plaintiffs' Exhibit No. 2
5 was admitted in full.)

6 MR. WISTOW: Now, as Your Honor will see, on the
7 second page of the Exhibit, which is actually the 11th
8 page of the document, in Paragraph No. 1.47, there's a
9 definition of the shareholder, which is totally and
10 completely consistent with the judgment Your Honor
11 entered. It says, Shareholder means the Palestinian
12 National Authority acting through its successor as the
13 holder of the outstanding shares.

14 So that's where we stood. At the time
15 Your Honor turned the shares over in the Creditor's
16 Bill to the Plaintiffs, the shareholder was the
17 Defendant, Palestinian Authority.

18 Now, something happened thereafter that's
19 critically important and helps show why we need
20 protection against the Palestinian Authority in terms
21 of their frustrating our ability to collect both the
22 underlying judgments for the \$116 million, plus the
23 Creditor's Bill.

24 On November 28th, 2006, the President of the
25 Palestinian Authority and the Executive Officer of

1 the -- well, the Chairman of the Executive Committee of
2 the Palestinian Liberation Organization, Mahmoud Abbas,
3 wrote a letter to Dr. Condoleezza Rice, who was at that
4 time the Secretary of State of the United States,
5 regarding this very lawsuit.

6 Now, Your Honor, this letter now is two months
7 following the Creditor's Bill where Your Honor made the
8 award, and this document of course has been produced to
9 us by the Defendants. May I --

10 THE COURT: We'll mark it Plaintiffs' Exhibit 3.

11 (Plaintiffs' Exhibit No. 3
12 was admitted in full)

13 MR. WISTOW: The most critical portion of the
14 letter, Your Honor, is the first paragraph and the last
15 paragraph on the second page.

16 THE COURT: All right.

17 MR. WISTOW: So, as Your Honor can see, as of
18 November 28th, 2006, the President of the Defendant PA
19 and the Chairman of the Executive Committee of the
20 Defendant PLO was completely and fully aware of what
21 had been taking place in Your Honor's Court. In fact,
22 the letter does everything but name you by name. It
23 describes the dates that everything happened.

24 And what is also significant in the letter, and
25 I'll refer back to it later, is the fact that President

1 and Chairman Abbas refers to the PIF in the second
2 paragraph, the second sentence. He talks about the PIF
3 being incorporated in 2003, and then he flat out says,
4 It falls under the supervision of my office. The PIF
5 falls under the supervision of his office is what he
6 told Condoleezza Rice at that time.

7 Now, Secretary Rice wrote back to
8 President Abbas in response to this letter about two
9 weeks later, on January 12th, 2007, and if I might hand
10 it up to Your Honor.

11 THE COURT: Plaintiffs' Exhibit 4.

12 (Plaintiffs' Exhibit No. 4
13 was admitted in full)

14 MR. WISTOW: So, as Your Honor sees, two weeks
15 after Mr. Abbas asked Condoleezza Rice for her, quote,
16 Kind assistance in addressing this serious matter, she
17 wrote back and in very diplomatic fashion indicated
18 that, while she was sympathetic, there was nothing she
19 could do about it, presumably because of the separation
20 of powers that we have in the United States and the
21 fact that we have an independent judiciary, and she
22 urged that the PA meet with the opposing side to see if
23 there's possibly some out-of-court resolution that
24 could be made but effectively declining to do anything.

25 Then, after getting this letter and

1 approximately two weeks later, actually, less than two
2 weeks later, the Palestinian Authority decided to do
3 something to frustrate Your Honor's order. And what
4 the Palestinian Authority did was it changed the
5 stockholder. It ceased being the shareholder of the
6 Palestinian Investment Fund by a Presidential
7 proclamation on January 27th -- let me get the precise
8 date -- January 27th, 2007.

9 And what I have is the Presidential decree of
10 Abbas, which was issued about nine days -- excuse me --
11 approximately 15 days after Secretary of State
12 Condoleezza Rice declined to be of any assistance.

13 And with permission, I'd like to hand that up to
14 Your Honor.

15 THE COURT: We'll mark it Plaintiffs' 5.

16 (Plaintiffs' Exhibit No. 5
17 was admitted in full)

18 MR. WISTOW: Now, on Page 3 of the document
19 you'll see, in the Article 6, that the shares are no
20 longer owned by the Palestinian Authority, they're now
21 owned, fully owned by the Palestinian people,
22 represented by the President of the PNA.

23 On Page 4 of the document, Your Honor will note
24 that, under Article 8, Paragraph 1 on Page 4, it
25 reiterates what is very clear from the prior page, The

1 company shares are registered in the name of the
2 Palestinian people, represented by the President of the
3 PNA. No longer is the PA the shareholder.

4 Furthermore, the President of the Palestinian
5 Authority completely runs this entity under these
6 bylaws. For example, on Page 8, Article 10, The Board
7 of Directors comprising of seven members, including the
8 Chairman, assumes management of the company. The Board
9 of Director members are thereto assigned by the
10 President of the PNA according to merits of efficiency
11 and experience.

12 Under Article 11, The President of the PNA shall
13 appoint the Board of Director Chairman and his deputy.

14 On Page 12, Your Honor, Article 12 -- excuse
15 me -- Article 20 on Page 12, The company Chief
16 Executive Officer shall be appointed and relieved of
17 his duties as per decision by the President of the PNA.

18 Finally, Your Honor, on Page 15, you'll see that
19 the, quote, General Assembly of the company, which is
20 Article 24 on Page 15, The company General Assembly
21 comprises of the President of PNA *ex-officio*, as
22 representative of the Palestinian people.

23 And then it goes on to say that the decisions of
24 everything of interest to the company is decided by the
25 General Assembly. Effectively, the President of the

1 PNA runs the Palestinian Investment Fund.

2 But more important than that, Your Honor, is
3 the -- what appears to be a frank fraudulent transfer
4 of the ownership of the Palestinian Investment Fund
5 following Your Honor's turning over that ownership to
6 the Plaintiffs.

7 Interestingly enough, Your Honor, the
8 Palestinian Authority, when it suits them, when it
9 suits them, claims that the investments in the PIF
10 belong directly to the PA, as opposed to what's being
11 said now, that they belong to the Palestinian
12 Investment Fund.

13 And the basis for that statement, Your Honor, is
14 when the Plaintiffs' Creditor's Bill was filed back in
15 2006, attached to that -- and I'll hand it up for the
16 Court's convenience -- attached to the Creditor's
17 Bill --

18 THE COURT: Plaintiffs' 6.

19 (Plaintiffs' Exhibit No. 6
20 was admitted in full)

21 MR. WISTOW: -- was an affidavit that had been
22 supplied by an Israeli lawyer. The affidavit is of one
23 Nadim al-Barahama, who, in an Israeli terrorist
24 proceeding, identified himself as legal counsel for the
25 Palestinian Office of Finance.

1 And he made the affidavit -- I don't know if
2 Your Honor is able to locate it. It's -- these are,
3 unfortunately, unnumbered pages. It's about midway
4 through, it's entitled, Affidavit.

5 And what he says, what Barahama says, is that he
6 makes the affidavit on the motion -- in support of the
7 motion of the Palestinian Authority to vacate an order
8 of attachment that was entered against its property,
9 and as I say, this was in an Israeli anti-terrorist
10 proceeding.

11 And what he says in Paragraph 5, is, Likewise,
12 the Palestinian Authority has investments worth at
13 least \$600 million in various companies, including the
14 Algerian, Jordanian and Tunisian communication
15 companies, the Palestinian cement company, as well as
16 hotels, banks, airlines, real estate ventures and the
17 like.

18 And then he says, A copy of the appendix to the
19 report by the Standard & Poor's Company regarding
20 assets of the Authority, assets of the Authority, is
21 attached hereto as Appendix A as an inseparable part of
22 my affidavit.

23 And that Appendix shows -- it's on the
24 letterhead of the Palestinian Investment Fund and lists
25 all of the investments that are in the Palestinian

1 Investment Fund.

2 So when the PA wanted to tell the Israeli Courts
3 that it was their assets, they had no problem doing
4 that and were able to relieve themselves in many cases
5 of attachments, which raises the interesting conflicts
6 of laws problem about whether or not judicial estoppel
7 applies in a situation where there are representations
8 made to an Israeli Court which are accepted by that
9 Court, and now contradictory statements are being made
10 to this Court.

11 In any event, what we see happening here,
12 Your Honor, is we've been -- when I say we, the
13 Plaintiffs have been attempting to collect the
14 underlying judgment since 2004, and a great many
15 activities have been going on. There are attachments
16 in Israel that we've been successful in getting. The
17 Palestinian Authority has appealed -- let me back up to
18 explain the situation.

19 The Plaintiffs took Your Honor's judgment and
20 domesticated it in the Israeli Trial Courts and were
21 able to get an attachment against the Israeli
22 Government, which was holding funds belonging to the
23 Palestinian Authority.

24 That domestication has been appealed by the
25 Palestinian Authority to the Supreme Court of

1 Israel, and that attachment may or may not prevail,
2 depending on the outcome in the Supreme Court of
3 Israel.

4 Also, there's a serious issue about whether or
5 not an attachment runs against the Israeli Government.
6 It's beyond my ability to explain the issues, but that
7 is being litigated as we speak in Israel.

8 So there's a need for security. And one of the
9 things that we're very concerned about is that the
10 Palestinian Authority is doing what it can to take
11 assets that otherwise ultimately would be available and
12 putting them outside the United States.

13 A very, very eloquent statement of the PA's
14 involvement is a privilege log, which we just received
15 from the Defendants within the last several days, the
16 origin of this was we asked in request for production
17 of documents, running between the Palestinian Authority
18 and the Palestinian Investment Fund.

19 The argument was made that privileges existed
20 between those two entities, and Judge Martin ordered a
21 privilege log be generated.

22 This privilege log, which I'd like to hand up to
23 Your Honor, is dated November 12th, 2010, so it's just
24 a very few days old.

25 THE COURT: We'll mark it Plaintiffs' 7.

(Plaintiff's Exhibit No. 7
was admitted in full).

MR. WISTOW: The earliest entry -- the log is
not in chronological order for reasons I don't know.
It was prepared by defense counsel.

The earliest entry dates to 2007, and in that
relatively brief period of time -- I say relatively
brief, in the history of this case, three years is not
that long a time -- you can see that 309 communications
over -- roughly 100 a year, two a week have been
exchanged between the Palestinian Authority and the
Palestinian Investment Fund.

And, obviously, there's a great deal going on
between them that we don't know and we don't
understand, and we're going to be filing various
motions regarding the disclosure of some of these
privileges.

But, in any event, what we're really coming down
to say is we think we've made a good demonstration that
the PA has been doing what they can to frustrate our
collection of both judgments and that all we're asking,
we're not asking that the PIF doesn't collect from
Orascom, we're not asking Orascom not to pay the PIF in
this Court, all we're asking is that Your Honor
continue the temporary restraining order as a

1 preliminary injunction saying to the PA, stay away from
2 the assets of the PIF that we -- that this Court
3 assigned over to the Plaintiffs.

4 Now, not to prolong this unduly, but we just
5 received, I think it was last night, a motion that the
6 Defendants have filed to vacate Your Honor's Creditor's
7 Bill order. In other words, we have of course -- we
8 were confronted in January with the motion to vacate
9 the underlying judgments. We just received a motion
10 saying that Your Honor's final judgment of turnover of
11 the PIF to the Plaintiffs is void and fraught with
12 error and they want that vacated too.

13 Now, that's not before Your Honor, and as far as
14 I'm concerned, if that issue comes up today, all that
15 really needs to be said is there's an order Your Honor
16 entered. We'd like that order protected, and the time
17 may come, it apparently is coming, where we're going to
18 be fighting about the validity of your Your Honor's
19 order, but that is not before the Court.

20 And, therefore, Your Honor, for all of those
21 reasons, we would ask for the preliminary injunction to
22 at least be continued till the hearing in January.

23 By the way, on the question of a bond, that
24 mention was made of a bond, if the PA could show how
25 they're being hurt, that would be one thing. We're not

1 even talking about the PIF not getting the money, we're
2 not talking about Orascom not paying the money, so I
3 really don't understand why there would be even an
4 argument in favor of the bond, which in any event, in
5 the First Circuit is discretionary with Your Honor
6 anyway. Your Honor could decide that no bond is
7 necessary at all.

8 THE COURT: The 45 million is the security in
9 this case.

10 MR. WISTOW: I beg your pardon, Your Honor?

11 THE COURT: The 45 million is the security.

12 MR. WISTOW: Well, we're hoping to make it the
13 security. There's huge fights. Your Honor would --
14 the litigation that has been going on in this case is
15 truly mind-boggling to enforce these things, but
16 there's a \$45 million debt that is owed by Orascom, the
17 Egyptian company, to the PIF, and we -- as far as we're
18 concerned, whether or not that should be paid, that's
19 being litigated in other courts.

20 All we're asking this Court is to tell the
21 Palestinian Authority to stay out of that issue.
22 That's all we're asking. And that is what the TRO has
23 ordered, and that's what we're asking to be continued.
24 And we're asking that other courts decide whether
25 Orascom should pay, whether they shouldn't pay, not

1 this Court, and I don't think Your Honor wants to get
2 into that complication.

3 THE COURT: I have no jurisdiction over the PIF
4 and Orascom.

5 MR. WISTOW: Of course, and nobody's
6 suggesting --

7 THE COURT: My jurisdiction is over the
8 Palestinian Authority.

9 MR. WISTOW: Right. Believe me, Your Honor --

10 THE COURT: That's who I issue orders against.

11 MR. WISTOW: Believe me, Your Honor, if I
12 thought Your Honor had jurisdiction against Orascom or
13 the Palestinian Investment Fund, we would have asked
14 for relief. We agree there's no jurisdiction of this
15 Court over them, and we're not asking for any relief as
16 against them.

17 Thank you, Your Honor.

18 MR. ROCHON: Good afternoon, Your Honor.
19 Mark Rochon on behalf of the Palestinian Authority and
20 the PLO.

21 This request we would contend to the Court does
22 not belong here for several reasons, and I'll get into
23 those.

24 But first I'd like to take the Court back to
25 what you heard today and contrast it with what you read

1 since they got the TR0. The memorandum in support of
2 the TR0 and the preliminary injunction reads nothing
3 like the presentation that counsel just made.

4 The written memoranda in support of the request
5 talks about the premise for the Court ordering this
6 having to do with a Mr. Mustafa who they claim is
7 subject to the order that this Court is being asked to
8 issue and that Mr. Mustafa, because he also is with
9 PIF, can therefore be directed to take no actions to
10 collect on this debt.

11 And, therefore, though they don't tell you this,
12 the Plaintiffs' papers contend that any order you issue
13 as against the PA will have the effect of telling the
14 PIF what to do or not do even though you do not have
15 jurisdiction over it, as you well know and as we have
16 all agreed.

17 Their papers say that. That is how they
18 interpret the TR0 you issued, and that is how they
19 interpret the preliminary injunction they're asking you
20 to issue.

21 So though they like to say we're just asking you
22 to tell the PA not to do anything, in fact, and I would
23 encourage the Court to ask them, isn't it your view,
24 Plaintiffs' counsel, that if the Court issues this
25 injunction, that it will bind the PIF as well because

1 of their theory of the connection of Mr. Mustafa to it?

2 This Court cannot escape the fact that what --
3 this doesn't belong here. There is a debt owed in
4 Egypt by Orascom to the PIF. The Plaintiffs for five
5 years have tried various theories to have that debt be
6 part of a collection action in this case. They've
7 conducted that litigation in courts in the
8 United States multiple times, multiple places.

9 We, the PA and the PLO, have never appeared in
10 any of those courts in connection with that effort.
11 The PIF has not appeared in any of those courts in
12 connection with that collection effort.

13 Orascom has. And when Orascom has appeared in
14 courts, Federal and State, in connection with this
15 debt, this \$45 million dispute originating out of
16 Egypt, they have prevailed as against the Plaintiffs
17 every single time.

18 The Ungars have gone to seek that debt. So too
19 did the Knoxes. You'll recall Judge Marrero, United
20 States District Court in New York, had the Knox case in
21 front of him, and they sought also to enforce as
22 against Orascom for this debt in connection with the
23 judgment they had.

24 Judge Marrero said, You can't do that, there's
25 not jurisdiction, and he found that PIF was not an

1 alterego and was not subject to any of the collection
2 efforts that he had before him in connection with his
3 judgment, and he threw out that effort as being
4 unfounded and without jurisdiction.

5 The Ungars went and were in front of another
6 United States District Court Judge in New York,
7 Judge McMahon, and they sought the same action, to
8 bring an action seeking collection on this debt, trying
9 to suggest that PIF -- that any debt to PIF was
10 collectable in connection with your judgment, and
11 Judge McMahon threw them out of court for no
12 jurisdiction.

13 They went to the United States District Court
14 for the District of Columbia and sought the same
15 type of action, and I'd like to tell you what the
16 United States District Court said about their theory of
17 jurisdiction on this debt.

18 And I quote from Magistrate Judge Kay's report
19 and recommendation adopted by United States District
20 Court Kessler in her eventual ruling, Plaintiffs'
21 argument is more than a non sequitur; it is fallacious
22 and borders on outright sophistry. This undersigned
23 wholeheartedly rejects it. Close quote.

24 The Plaintiffs went to New York State Court and
25 sought to bring the same issue of this Orascom debt and

1 whether it's collectable in connection with your
2 judgment on the same notion, and on August 16th, 2006,
3 Judge Konreich ruled, and again, I quote -- and this is
4 in Docket 108090, 2005, August 15th, 2006.

5 She vacated a Sheriff's levy, the same type of
6 levy that they say is currently holding this asset.
7 She vacated the Sheriff's levy and execution issued to
8 Orascom because, and now the quote begins, I quote, The
9 attachment here targets no property located in
10 New York, close quote.

11 Yes, the Plaintiffs have chased this
12 \$45 million. The reason that it is not collectable in
13 the United States is absolutely clear, because there's
14 no jurisdiction over that asset. It's owed by Orascom
15 ostensibly to the PIF in a matter that's been
16 adjudicated in Egypt but as to which there's no
17 jurisdiction here. It is an asset outside the reach of
18 US Courts.

19 The PIF is not before you, and you have no
20 jurisdiction over it. But when you listen to
21 Mr. Wistow -- let me back up for a second, Your Honor.

22 The evidence in front of you in connection with
23 this hearing, no witnesses, no cross-examination, the
24 Plaintiffs have put nothing before you, but they've
25 tried to put facts before you and ask you to reach

1 certain factual conclusions.

2 They filed a verified memorandum, and it was
3 sworn to by an Attorney Robert Tolchin who also seeks
4 to appear before you in this case pro hac vice. His
5 application is pending. Whether or not that raises
6 issues of lawyer as witness --

7 THE COURT: I granted it this morning.

8 MR. ROCHON: Then we may not leave it for
9 another day, but that's a separate matter. He is an
10 attorney in this case, and he provides the affidavit
11 that prompted the TRO and is the basis for us being
12 here today. And I'd like to tell you, Your Honor, that
13 he says in that affidavit several things that I think
14 you should pay careful attention to.

15 The first is he says, at the bottom of the first
16 page, and he's sworn to the truth of this, he says,
17 This debt is restrained by a writ of execution issued
18 from a New York State Court.

19 Your Honor, that's not accurate, or at least it
20 omits a material fact. As he knows, because he's
21 counsel in the matter, Orascom has brought to the
22 attention of the New York State Court that has that
23 purported levy the fact that it is itself void because
24 he failed to serve it in time and expired as a matter
25 of law.

1 That issue hasn't been decided by the New York
2 State Court, but the fact is Mr. Tolchin, in his
3 verified memorandum, didn't tell you that there's a
4 question of whether or not this asset as to which
5 they're seeking to have you issue some directive or
6 order to our client or injunction as to our client, he
7 didn't tell you that, that asset may well not even be
8 attached, and, more importantly, he didn't tell you
9 that a New York State Court, in 2006, August -- I have
10 just quoted you the opinion -- when he sought to attach
11 that asset the first time there, found there was no
12 jurisdiction over it. There is only a matter of time
13 before he loses again on the issue of whether there's
14 jurisdiction over this asset that brings us to you.

15 The Plaintiffs in this case, if they -- oh,
16 there's one other thing he said in there that I want to
17 bring to your attention before I get to the Plaintiffs.

18 It's no surprise to me that the Plaintiffs today
19 haven't talked very much about his memorandum, which is
20 what caused you to issue your TRO. And it's no
21 surprise to me they didn't talk very much about
22 Mr. Mustafa, and they didn't stand apparently behind
23 the representations made under oath to you.

24 On Page 7 of the sworn-to verified memorandum,
25 Mr. Tolchin states, in the pleading that's -- I know

1 Mr. Strachman submitted it, but it's Mr. Tolchin who
2 makes the sworn statement that is adopted by the
3 filing -- he says in a November 28th, 2006 letter,
4 Defendants' leader, Mahmoud Abbas, expressly stated
5 that he had tasked Mustafa with fighting the Creditor's
6 Bill's judgment.

7 That's a pretty strong statement, and that's
8 their hook to say that you should equate what PIF does
9 with the PA.

10 Thereafter, in the memorandum that's before you,
11 they repeatedly refer to the actions taken by PIF as
12 the PA acting putatively in the name of PIF, all on the
13 hook of Mr. Mustafa and the supposed directive to him
14 from President Abbas to, quote, fight the Creditor
15 Bill's judgment.

16 The basis for that is said to be what's referred
17 to as Exhibit R but which is before you this afternoon
18 as an exhibit from Plaintiffs, referred to as
19 Exhibit 3. That's the letter from President Abbas to
20 Secretary Rice.

21 Now, what does it say that he told Mr. Mustafa
22 to do? I mean, given the representation that
23 President Abbas expressly stated he tasked Mustafa with
24 fighting the Creditor Bill judgment, you would think
25 there would be support. That's a strong statement, and

1 that's the hook in the memorandum for you to find that
2 the PIF acts at the behest of the PA.

3 Well, at the end, after he, President Abbas,
4 gives his compliments and thanks for the Secretary's
5 consideration of the matter, he says the following
6 about what he's asking Mustafa to do, quote, I will ask
7 my economic advisor and the CEO of the PIF,
8 Dr. Muhammad Mustafa, to follow up on this matter with
9 US Consul General in Jerusalem, Mr. Jacob Walles,
10 W-a-l-l-e-s, period, close quote.

11 Follow up with the US Consul is a far cry from
12 I've directed him to fight this Creditor Bill judgment.
13 Judge, this memorandum --

14 THE COURT: Well, you're doing it now by filing
15 a motion to vacate it, aren't you?

16 MR. ROCHON: Your Honor, we did not file a
17 motion to vacate previously because, up until now, the
18 Creditor's Bill judgment did not ask the Defendant PA
19 or PLO to do anything. It was a document that acted on
20 its own, ostensibly transferring assets to the
21 Plaintiffs.

22 That, as you have often said to lawyers who've
23 come here to try to talk to you about the implications
24 of that and your other -- your underlying judgment, the
25 interpretation of that and its meaning is to be

1 determined in the places where the assets reside.

2 When the pension fund came here, that's what you
3 suggested to them. When the PIF tried to come here
4 through their lawyers, Leboeuf, they tried to appear
5 before you, that's what you told them.

6 You have been consistent, Your Honor, in
7 directing that people who come to you regarding your
8 orders in this case take their dispute to the place
9 where the asset is and deal with it there.

10 Until today with this motion, this injunction
11 has not been brought before you with them asking you to
12 tell the PA to do something. The Plaintiffs are now
13 trying to use -- what's going on here, Judge, let's be
14 clear, this is part of an effort by the Plaintiffs to
15 try to win the hearing in January.

16 Their theory is that the Defendants have acted
17 with unclean hands and, therefore, that's a basis for
18 you to deny the underlying judgment.

19 Our position in challenging the underlying
20 judgment had been we did not need to attack the
21 Creditor's Bill, which was derivative of the underlying
22 judgment. We challenged the underlying judgment. The
23 Creditor's Bill had not resulted in anything except
24 litigation over its meaning elsewhere.

25 The United States District Court in Connecticut

1 is considering its validity, but they've stayed it
2 while they wait on the eventual resolution of the
3 vacator motion. The other courts that have been asked
4 to do anything on it have made determinations as to its
5 extent, its validity or its meaning.

6 The Orascom raised in Cairo this order, the
7 Creditor's Bill judgment order, and whether in fact the
8 Ungars or the -- what we call the original PIF was the
9 proper party, and the Egyptian Courts reached that
10 issue.

11 So your judgment has been subject to
12 interpretation and discussion in the places where
13 assets lie until today. The Plaintiffs want to bring
14 this to you now and accelerate this matter as to which,
15 let's face it, unless the PA has a connection where it
16 can control what PIF does, this is a -- this doesn't
17 matter. The money isn't owed to the PA. It's owed to
18 PIF.

19 THE COURT: Plaintiffs have no objection if it's
20 paid to PIF. They only want an injunction against
21 meddling by the Palestinian Authority --

22 MR. ROCHON: If the Plaintiffs agree --

23 THE COURT: -- over whom I do have jurisdiction.

24 MR. ROCHON: Absolutely. I agree with you,
25 Your Honor, that if the money is paid to the PIF, it's

1 not before you and it's not the PA. We are not PIF.

2 They're implicitly suggesting to you to
3 somehow -- I guess all that argument, you know, there
4 was a lot of talk about what the President has or has
5 not done with PIF. Ultimately, since the debt isn't
6 owed to my client, neither of them and we don't control
7 what happens with it, why are we here on a preliminary
8 injunction?

9 THE COURT: They want to be sure that the PA
10 does not interfere and somehow get those funds.

11 MR. ROCHON: Your Honor, the issue of the
12 Orascom paying PIF we all agree is not before you. I
13 agree with you, and I agree with the Plaintiffs. That
14 issue --

15 THE COURT: My injunction will not have anything
16 to do with that.

17 MR. ROCHON: And, therefore, the real question
18 is: What are the Plaintiffs seeking to do here?

19 But let's -- if I may, Your Honor, point out to
20 you that the Plaintiffs, they may say, oh, we're just
21 here to tell the PA or the PLO what to do, but if you
22 would look, Your Honor, at their papers, at the
23 verified memoranda, you can see that they actually are
24 going to interpret your order more broadly than they
25 admit.

1 If your order simply says the PA, as opposed to
2 PIF, is enjoined from taking action to collect this
3 debt and you have no jurisdiction over PIF,
4 that's fine.

5 But that's not what they're saying to you,
6 Your Honor. They actually are claiming in their papers
7 that we, the PA, because Dr. Mustafa is an economic
8 advisor to the President and is also the President of
9 the PIF, that an order to us controls what PIF may do.
10 That's what they say.

11 Ask them, Your Honor, because what I don't want
12 to have happen is for you to issue an order telling my
13 client what not to do and, if PIF gets this money,
14 they're going to come in and scream and say it's our
15 fault, and that would be unfair and legally
16 unsupportable.

17 What they're really trying to do is do a
18 back-door peacock analysis, and that's the case that
19 suggests that when a judgment is sought to be enforced
20 against a nonparty, you need jurisdiction over that
21 nonparty. You don't have jurisdiction over PIF, and
22 you're not in a position to tell them what to do.

23 THE COURT: You keep saying that, and of course
24 I agree with you.

25 MR. ROCHON: I know, Your Honor, but what's

1 going to happen is when you issue this --

2 THE COURT: You keep confusing the two.

3 MR. ROCHON: I am not --

4 THE COURT: You're contributing to this
5 confusion.

6 MR. ROCHON: Your Honor, because --

7 THE COURT: If I issue an injunction in this
8 case, it will be against the PA and the PA only over
9 whom I have jurisdiction, and you agree.

10 MR. ROCHON: We certainly have lost on that
11 issue and are not challenging it, Your Honor.

12 If the Court would -- the Plaintiffs contend and
13 have said to you, on Page 3 of their papers, Since
14 Mustafa is an officer and agent of the PA and is acting
15 in active concert or participation with the PA, any
16 injunction against the PA would automatically enjoin
17 him as well.

18 THE COURT: I don't agree with that. Mustafa is
19 not involved.

20 MR. ROCHON: Your Honor --

21 THE COURT: If he purports to act on behalf of
22 the PA and I've issued an injunction, that will bind
23 the PA, and contempt proceedings may be brought against
24 the PA but not Mustafa. I'm not issuing anything
25 against Mustafa.

1 MR. ROCHON: Your Honor, in terms of the other
2 matters that I'd want to bring to your attention,
3 essentially, therefore, the injunction they seek, the
4 Plaintiffs aren't contending that we, the PA, have
5 pursued the -- let me back up.

6 In their papers, when they refer to the
7 litigation, the Orascom litigation, they say that it's
8 brought by the PA. That's what this declaration signed
9 by this guy Tolchin says. But it's false.

10 THE COURT: What is brought by the PA?

11 MR. ROCHON: The Orascom action itself in Cairo
12 they say is brought by the PA. That's what Mr. Tolchin
13 says in his papers.

14 THE COURT: Well, I don't have to accept that.

15 MR. ROCHON: Well, I would urge the Court not to
16 because it's false. It's brought in the name of the
17 PIF. When he says that the -- if you go through these
18 papers and you circle every time where it says the PA
19 did something putatively as PIF, it tells you what
20 their real theory is here.

21 And I think the Court -- I am on the same
22 wavelength with you as to the jurisdiction you do have
23 and the authority you do have in connection with this
24 matter. The Plaintiffs are going to twist the order
25 and try to use it to suggest --

1 THE COURT: I can't anticipate what they're
2 going to do in other courts.

3 MR. ROCHON: Right. Well, I guess what I'm
4 suggesting to the Court is the right place for them to
5 be in connection with this matter is a place where they
6 have jurisdiction over PIF because PIF is to whom the
7 debt is owed. Their notion is that ultimately they
8 should get the money that is owed to PIF. They've
9 got --

10 THE COURT: Well, they'll have to go somewhere
11 else to do that. I can't do it. I can't handle that.

12 MR. ROCHON: I agree. But they have
13 jurisdiction over PIF they claim in Connecticut. They
14 have jurisdiction they claim over Orascom itself in
15 New York. I think they have no basis for it, but
16 that's what they say.

17 THE COURT: Well, that's up to them, and that's
18 up to other courts.

19 MR. ROCHON: But that's the right place to be in
20 connection with this debt, which is not owed to my
21 client and as to which my client is not a party and as
22 to which it's over in Egypt, not before any of these
23 courts.

24 So this preliminary injunction, this TRO is kind
25 of an odd beast because they're asking you to order

1 someone to whom no money is owed who's not a party in
2 the contested debt to do something or not do something
3 as between those two other entities which have the debt
4 between them.

5 THE COURT: They're asking me to tell the PA not
6 to interfere in that matter.

7 MR. ROCHON: I guess what I'm telling the Court
8 is there's no basis to believe we would.

9 THE COURT: Well, I don't know whether you would
10 or not.

11 MR. ROCHON: They haven't made a factual basis
12 for that.

13 THE COURT: The PA has a long history of
14 disregarding my orders.

15 MR. ROCHON: Your Honor, in terms of the
16 Creditor's Bill judgment and PIF, PIF is represented by
17 counsel, separate counsel. The Ungars and PIF's
18 original directors have disputes as to the meaning and
19 effect of your order. The PA has and raised yesterday
20 with the Court whether or not the Creditor's Bill
21 judgment is properly entered for a host of reasons.

22 That action was prompted by the -- now they're
23 coming in and trying to use it to direct our client
24 what to do regarding PIF. It's the Plaintiffs who
25 prompted yesterday's filing. Why we are here on this

1 \$45 million debt, which is owed between these other two
2 parties when we should be focused on a vacator hearing
3 is beyond me.

4 But I know the answer to the question. They
5 just want to use this as a vehicle to try to suggest to
6 you that you should deny that other motion. That's
7 what's going on.

8 THE COURT: I'll deal with that other motion at
9 the appropriate time.

10 MR. ROCHON: If I could have the Court's brief
11 indulgence.

12 There was one other important point. Thank you.

13 The Plaintiffs' procedure by virtue of these
14 exhibits and the verified memorandum, which is sworn to
15 by this lawyer who seeks to appear -- I guess now has
16 been granted permission to appear before you, we
17 contend that there's a host of inaccuracies in that
18 memorandum.

19 It omits material facts, it misrepresents the
20 meaning of what President Abbas did regarding
21 Mustafa --

22 THE COURT: I will disregard it.

23 MR. ROCHON: Well, Your Honor, if the Court's
24 going to disregard the memorandum in its entirety,
25 which I think is what you should do, another reason to

1 do so is the Court doesn't know what interests the
2 affiant has in the outcome of the litigation.

3 If the Plaintiffs had proceeded with evidence
4 proper instead of hearsay from him, he could have been
5 examined as to whether or not he has an interest in
6 this debt if it should come to the Ungars.

7 Mr. Tolchin says he represents the Ungars. We
8 don't have his engagement letter or his financial
9 terms, but I would suggest to the Court that, before
10 one could properly consider it, you would also need to
11 know whether or not the affiant has an interest in the
12 outcome. It's classic bias.

13 It's one thing if you represent a party and you
14 provide an affidavit in connection with some matter in
15 connection with your representation, but this affiant
16 seeks to tell the Court what happened with Mustafa and
17 the President, what's happened in Cairo, what has
18 happened in a host of places, what is happening in
19 New York State Courts, all of which he claims to have
20 actual knowledge of pursuant to his declaration --

21 THE COURT: You're beating a dead horse. I'm
22 going to disregard that affidavit, I told you --

23 MR. ROCHON: Very well, Your Honor. If the
24 Court --

25 THE COURT: -- because that's my policy. I

1 don't like affidavits because people can say most
2 anything on an affidavit and not be subject to
3 cross-examination. And I only accept affidavits when
4 the affiant is subject to cross-examination.

5 MR. ROCHON: Thank you, Your Honor. Then I'll
6 stop with that dead horse and suggest to the Court
7 that, once one removes that affidavit from your
8 consideration, what Mr. Wistow has offered you by way
9 of exhibits today does not provide a basis for the
10 Court to conclude that the PA has any involvement in
11 this debt or that you should order the PA to do or not
12 do anything.

13 A few things I'd like to say about what he's
14 proffered to you. The articles that he's put before
15 you, essentially that was a long way of him saying, we
16 think the PA has some control over what PIF does. I
17 know you agree you don't have jurisdiction over PIF
18 nonetheless, but that's where he was going with that.

19 And the fact of the matter is that the Courts
20 have recognized PIF is a separate legal entity. The
21 Plaintiffs agree with that. They claim that it's --
22 they don't disagree that it's a separate legal entity.

23 In the papers that you're disregarding, they
24 were calling it a self-settled trust, the PIF. Today
25 they've argued about that obviously it's controlled by

1 shareholders. They've abandoned the notion that it is
2 a self-settled trust.

3 THE COURT: I don't know what that means.

4 MR. ROCHON: I don't know either, but that's
5 what they called it in their papers that prompted the
6 TRO that you're disregarding.

7 The Plaintiffs' theory is the PIF is wandering,
8 and the reason it's wandering is because it has no
9 business being before you asking us to do anything in
10 regard to it.

11 They should get PIF before a court that has
12 jurisdiction over it or stop wasting the time and
13 effort in connection with a \$45 million debt that has
14 no connection to the United States.

15 Every Court that's ever seen this thing has
16 said, Get out of here. I actually suggest that's the
17 right result here as well. To tell the PA what to do
18 about a debt that is elsewhere that is not owed to it
19 tends to bring this Federal Court into a matter that
20 really you might as well tell the man on the street not
21 to do anything. We -- it's not owed to us.

22 THE COURT: The PA has a history here in this
23 case --

24 MR. ROCHON: The PA has a history in this case,
25 Your Honor, but that doesn't --

1 THE COURT: -- of stonewalling --

2 MR. ROCHON: -- that doesn't --

3 THE COURT: -- and interfering with the
4 collection of this judgment. And that's what the
5 Plaintiffs are asking me to do, tell them not to
6 interfere in this particular matter.

7 MR. ROCHON: Your Honor, I don't know the basis
8 for the Court's statement to say the PA's interfered
9 with the collection of the judgment. I understand that
10 the PA has not paid the judgment. That's why we
11 proceed under 60(b)6, but I don't know the basis to say
12 we have interfered with it. And we would contend --

13 THE COURT: And they have refused to pay it.

14 MR. ROCHON: That is -- it is clearly not paid.
15 The PA has said for the last three years they seek to
16 litigate the case, and when that Knox -- that was the
17 order of the Court, they may litigate the case, the
18 case was settled, the PA moved forward properly through
19 litigation.

20 Where the PA's been allowed to litigate, it has
21 complied with the orders of the Court. The PA seeks
22 only the opportunity to be heard in the matter, regrets
23 its previous misbehavior, but it has not interfered
24 with the collection of this judgment, Your Honor, and
25 if and when it gets an opportunity to litigate this

1 case, it will litigate it properly.

2 Thank you.

3 THE COURT: Mr. Wistow?

4 MR. WISTOW: May I respond very briefly,
5 Your Honor?

6 THE COURT: Yes.

7 MR. WISTOW: One of the reasons that I didn't
8 spend any significant time talking about the affidavit
9 is because I was familiar with Your Honor's
10 long-standing feelings about affidavits, and that's why
11 I put in documentary -- unquestioned documentary
12 evidence.

13 That evidence shows conclusively that, after
14 Your Honor ordered the transfer of the shares of stock
15 from the PA to the Ungars, the PA took the shares of
16 stock and transferred them after the judgment to the,
17 quote, Palestinian people and divested them -- it's on
18 its face a fraudulent transfer.

19 Now, my brother says that one of the things
20 we're trying to do is use this ultimately at the
21 hearing, and indeed I confess to that. One of the
22 things that this hearing is, is an action in equity.
23 A motion to vacate under 60(b), according to the
24 First Circuit, is an equitable proceeding.

25 And one of the things we're going to ask

1 Your Honor to take into account is, after, after they
2 claimed that they had turned over a new leaf and were
3 now in compliance and were ready to follow the orders
4 of American Courts and subject them to jurisdiction,
5 we're going to show that behind the scenes they
6 continue to flout the authority of this Court by
7 actively violating an order.

8 Now, I'm not embarrassed to tell Your Honor that
9 I'm planning to bring that up, that you shouldn't be
10 able to go into a Court and ask the Court's indulgence
11 to vacate an order of default unless you're prepared to
12 show that you have turned over a new leaf. They have
13 not.

14 Also, I didn't want to prolong this, but one of
15 the things that is indisputable, it's in their papers
16 and they will not be able to say no, is that, after,
17 after the PIF was assigned to the Ungars, indeed, even
18 after the motion to vacate was filed in December of
19 '07, the Palestinian Authority took money out of the
20 PIF, many, many, many millions of dollars. It's
21 reflected in the filing. There's no question of the
22 authenticity of those documents. They're generated by
23 the PIF.

24 So, for all of those reasons, Your Honor, all
25 we're saying is what Your Honor said, we're not asking

1 that the PIF be enjoined, we're not asking that the
2 Orascom being be enjoined. We're asking Your Honor to
3 tell the PA not to interfere further in this collection
4 proceeding in any way, shape or form.

5 Now, I'm not -- I hope Your Honor knows I'm not
6 a fool. I'm not going to come back in here, if I am
7 fortunate enough to get a preliminary injunction from
8 you that enjoins the PA, I'm not going to come back in
9 here and try to prove they've violated it unless I
10 think I really can. I'm not trying to set up some
11 straw man here.

12 And if Your Honor gives us a preliminary
13 injunction and we can prove that they violated it, for
14 sure we'll be back here as a minimum at the hearing in
15 on January 18th. But I can represent to the Court I'm
16 not going to come in here and get my head handed to me
17 by the Court by trying to prove the PA did something it
18 didn't.

19 Thank you, Your Honor.

20 MR. ROCHON: Your Honor, if I may briefly, there
21 was a couple of new things Mr. Wistow said.

22 THE COURT: All right.

23 MR. ROCHON: First of all, there's two things,
24 points I'd like to make. He references again these
25 articles and the changed shareholder. And this is the

1 problem of relying on hearsay evidence. Those
2 articles -- they haven't presented a witness as to why
3 it occurred, why the articles of incorporation were
4 changed. He hasn't discussed that with you.

5 But you -- if there were a witness from the
6 Plaintiffs on this, because they argue that, therefore,
7 you should assume that, because the articles are
8 changed, it has something to do with this case.

9 The fact of the matter is, and the Plaintiffs
10 know this because PIF in other courts has argued this,
11 because Hamas was involved in the unity Government at
12 the time, they didn't want Hamas to get ownership of
13 PIF, which was worth all that money.

14 And the United States of America, which
15 recognized that PIF should be deemed independent and
16 was a proper entity for US citizens to deal with, was
17 pleased at the idea that Hamas would not be able to tap
18 in to PIF because you'll recall the President of the PA
19 during part of this time is Hani -- I can't pronounce
20 his name -- is a gentleman from Hamas, and that is what
21 PIF would say as to why they changed them.

22 I'm not PIF. I can't present you the witnesses
23 as to why PIF changes its articles of incorporation,
24 but they want you to reach a factual conclusion as to
25 that because they're not proceeding with witnesses'

1 live testimony. They're proceeding with hearsay on
2 those articles.

3 The second thing I'd like to tell you is that
4 they refer to the PA supposedly violating or
5 disparaging your judgment because they have, they say,
6 taken money from PIF.

7 PIF is an investment vehicle that everyone has
8 agreed has provided dividends or payments to the PA,
9 never an amount that would threaten the judgment in
10 this case, never more -- the PIF has never been worth
11 less than a whole lot more than the judgment in this
12 case.

13 And so this sideshow of PIF and what it does
14 with its money is -- it suggests too much. The PA
15 receives funds from a host of entities, including the
16 United States of America, and it does so, frankly, even
17 though it has the judgment outstanding in this case.

18 Are the Plaintiffs going to come and say, when
19 the United States of America gives money to the
20 Palestinian Authority or when it asks for that money,
21 that they should stand in between the United States and
22 the PA?

23 This is such a sideshow to the actual issues
24 that are before you, Your Honor. And the arguments
25 that must be made by the Plaintiffs to get the relief

1 and the ones I must make in order to oppose it make
2 clear that this preliminary injunction must have some
3 purpose other than the actual merits of whether that
4 money's going to end up with PIF or not.

5 Thank you.

6 THE COURT: I want to read all these papers
7 overnight, and I'll render a decision tomorrow at
8 2:00 -- not tomorrow. I'm sorry. I can't sit
9 tomorrow. Friday, Friday at 2:00.

10 MR. ROCHON: Would you like us here tomorrow,
11 Your Honor?

12 THE COURT: I'm sorry?

13 MR. WISTOW: Friday.

14 MR. ROCHON: You'd like us here Friday at 2:00,
15 Your Honor?

16 THE COURT: Friday at 2:00. I have other things
17 to do tomorrow, personal things.

18 MR. ROCHON: Yes, sir. Thank you. May I say
19 one other thing?

20 THE COURT: Yes.

21 MR. ROCHON: Thank you. This privilege log,
22 it's referred to as a privilege log, I'd ask the Court
23 to note we have never claimed to be in privilege in
24 terms of attorney-client privilege or common interest
25 with the PIF. This is a work product claims that are

1 made as to the communications, not attorney-client
2 privileged communications. I just want the Court --

3 THE COURT: You see that's noted on the end.

4 MR. ROCHON: It is, and it's -- you'll see, for
5 every single entry, the type of privilege claimed is
6 work product, not attorney.

7 Thank you, Your Honor.

8 THE COURT: All right. Friday at 2:00.

9 (Court was concluded at 3:26 p.m.)

10
11 C E R T I F I C A T I O N

12
13
14 I, Debra D. Lajoie, RPR-FCRR-CRI-RMR, do
15 hereby certify that the foregoing pages are a true and
16 accurate transcription of my stenographic notes in the
17 above-entitled case.

18
19
20
21 /s/ Debra D. Lajoie

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25 11/29/10